

PATRICK D. ROBBINS (CABN 152288)
Attorney for the United States
Acting Under Authority Conferred by 28 U.S.C. § 515

MARTHA BOERSCH (CABN 126569)
Chief, Criminal Division

ROBERT S. LEACH (CABN 196191)
ADAM A. REEVES (NYBN 2363877)
KRISTINA N. GREEN (NYBN 5226204)
ZACHARY G.F. ABRAHAMSON (CABN 310951)
Assistant United States Attorneys

450 Golden Gate Avenue, Box 36055
San Francisco, California 94102-3495
Telephone: (415) 436-7014
Fax: (415) 436-7234
Email: Robert.Leach@usdoj.gov

Attorneys for United States of America

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

UNITED STATES OF AMERICA,)	Case No. CR 18-577 CRB
)	
Plaintiff,)	UNITED STATES' RESPONSE TO PROPOSED
)	JURY INSTRUCTIONS
v.)	
)	Trial Date: March 18, 2024
MICHAEL RICHARD LYNCH AND)	
STEPHEN KEITH CHAMBERLAIN,)	
)	
Defendants.)	

The government respectfully submits its Response to the Court's Proposed Jury Instructions filed May 27, 2024 [ECF No. 524-1].

Page 20 / Wire Fraud instruction. In light of the Ninth Circuit's recent holding in *United States v. Milheiser*, 98 F.4th 935, 944 (9th Cir. 2024), the government recommends adding the following sentence to the first element of wire fraud, beginning after the first sentence which ends with "omitted facts" on line 11: "The false or fraudulent pretenses, representations, or promises must go to the nature of the bargain, for example, to price or quality or otherwise to essential aspects of the transaction."

1 Page 23 / Wire Fraud – Good Faith instruction. The government objects. This instruction is
2 not necessary given the definition of intent to defraud. To the extent the Court gives a good faith
3 instruction, the government recommends it more closely align to the good faith instruction the Court
4 gave in *United States v. Reyes*, CR 06-556 CRB (N.D. Cal. Mar. 23, 2010), ECF No. 1158, which
5 reads:

6 It is the government’s burden to prove beyond a reasonable doubt that Mr. Reyes acted
7 with an intent to commit the offenses charged. Good faith on the part of Mr. Reyes is
8 inconsistent with a finding that Mr. Reyes knowingly or willfully committed any of the
9 alleged offenses. Thus, if the evidence in the case leaves you with a reasonable doubt
10 about whether Mr. Reyes acted with intent to commit the crime alleged in a particular
11 count, or instead whether he possessed a good-faith belief that the alleged false or
12 misleading statements were in fact accurate, you must find Mr. Reyes not guilty on that
13 count.

14 Alternatively, the government proposes the following changes to the proposed instruction:

15 The good faith of defendant is ~~a complete defense to the charge of wire fraud in Counts~~
16 ~~Two through Fifteen of the indictment because good faith is, simply,~~ inconsistent with the intent
17 to defraud ~~alleged in those charges.~~

18 A person who acts, or causes another to act, on an honestly held belief or opinion ~~is not~~
19 ~~punishable under this statute does not act with intent to defraud~~ merely because the belief or opinion
20 turns out to be inaccurate, incorrect, or wrong. ~~An honest mistake in judgment or an error in~~
21 ~~management does not rise to the level of intent to defraud.~~

22 A defendant does not act in “good faith” if, even though he honestly holds a certain
23 opinion or belief, that defendant also knowingly makes material false or fraudulent pretenses,
24 representations, or promises to others.

25 ~~While the term “good faith” has no precise definition, it means, among other things, a~~
26 ~~belief or opinion honestly held, an absence of malice or ill will, and an intention to avoid taking~~
27 ~~unfair advantage of another.~~

28 In determining whether or not the government has proven that the defendant acted with
an intent to defraud or whether the defendant acted in good faith, the jury must consider all of the
evidence in the case bearing on the defendant’s state of mind.

~~The burden of proving good faith does not rest with the defendant because the defendant~~
~~does not have any obligation to prove anything in this case.~~ It is the government’s burden to prove to
you, beyond a reasonable doubt, that defendant acted with the intent to defraud.

Page 26 / Wire Fraud – Respondeat Superior instruction. The government objects. This is
instruction is not necessary given the definition of intent to defraud. Alternatively, the government

1 requests the Court change the word “merely” to “solely” and add a sentence: “You may consider Dr.
2 Lynch’s position at Autonomy in connection with all of the evidence in the case.”

3 Page 30 / “Willfully” – Defined instruction. The government objects. The term willfully is not
4 present in 18 U.S.C. §1349. To the extent the Court decides to give the instruction, it should not
5 include any language after the second sentence ending “mistake.” The remainder is repetitive.

6
7
8 DATED: May 28, 2024

Respectfully submitted,

9 PATRICK D. ROBBINS
10 Attorney for the United States, Acting Under
11 Authority Conferred by 28 U.S.C. § 515

12 /s/
13 ROBERT S. LEACH
14 ADAM A. REEVES
15 KRISTINA GREEN
16 ZACHARY G.F. ABRAHAMSON
17 Assistant United States Attorney
18
19
20
21
22
23
24
25
26
27
28